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IN THE  
**Supreme Court of the United States**

October Term, 1942.

**No. 928**

**GLENS FALLS INDEMNITY COMPANY  
and  
JAHNCKE SERVICE, INC.,**

**Petitioners,**

**versus**

**JOSEPH H. HENDERSON, DEPUTY COMMISSIONER,  
UNITED STATES EMPLOYEES' COMPENSATION  
COMMISSION, SEVENTH COMPENSATION DIS-  
TRICT,**

**Respondent.**

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT AND BRIEF IN SUP-  
PORT THEREOF.**

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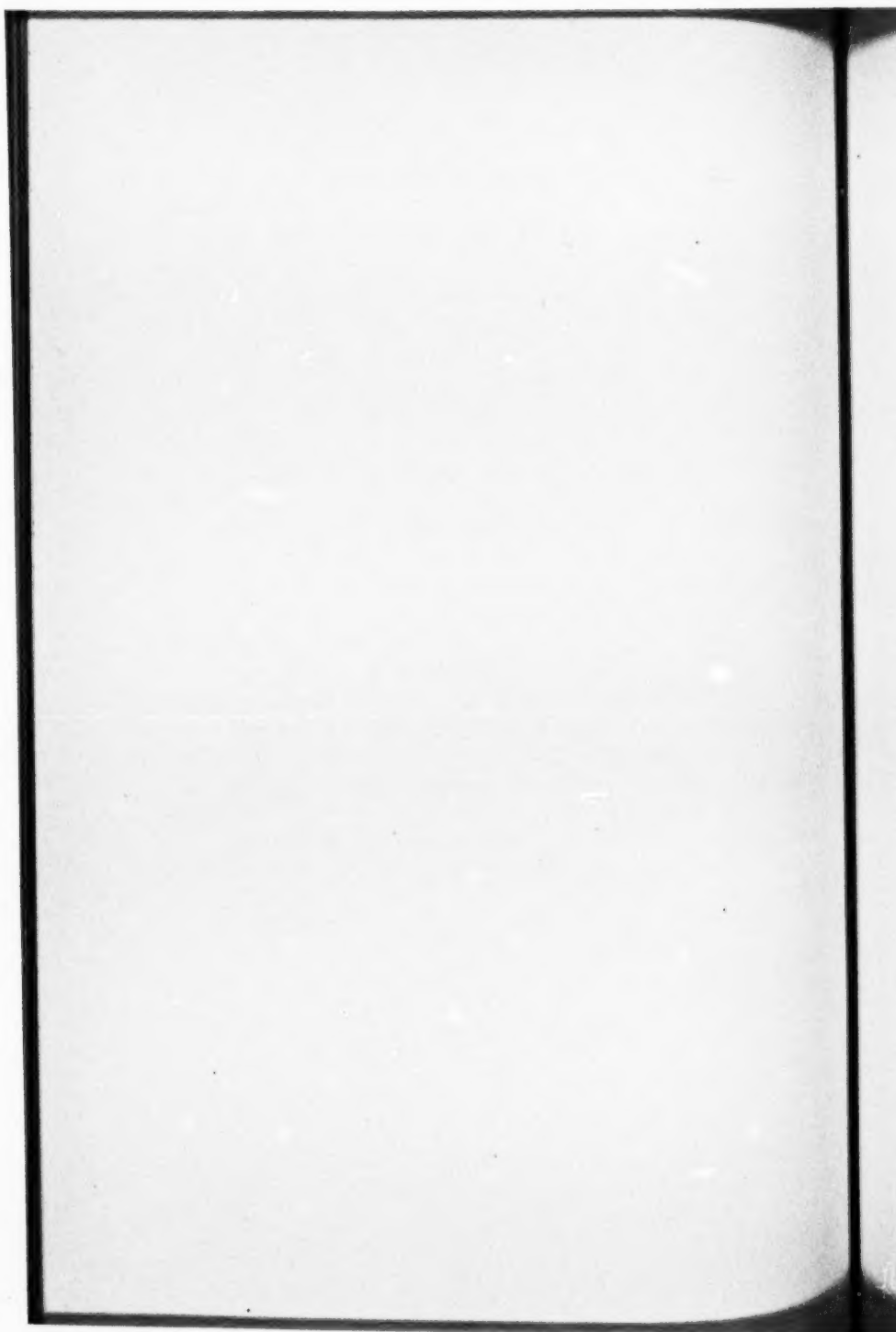
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**STATEMENT OF THE CASE.**

John Franklin was drowned while employed on a barge owned and operated by Jahncke Service, Inc., of New Orleans, Louisiana (R. 31, 32). A claim for compensation was filed under the Longshoremen's and Harbor Workers'

Compensation Act (*Act Mar. 4, 1927, c. 509, 44 Stat. 1494 [33 USCA Sec. 901 et seq.]*) on behalf of a minor child claiming as a dependent of the deceased employee (*R. 23*).

On January 21st, 1941, the Deputy Commissioner filed an order awarding compensation to the unrepresented minor child but directing that payment be held in abeyance until the appointment of a guardian to the minor child (*R. 31-34*). A tutrix was subsequently appointed on March 17th, 1941, and on April 5th, 1941, the Deputy Commissioner filed a supplemental order directing payment of all accrued and current compensation to the tutrix (*R. 37*).

On May 5th, 1941, the employer and its insurance carrier, petitioners herein, brought suit in the United States District Court for the Eastern District of Louisiana, to enjoin and set aside the Order, Award of Compensation, as being contrary to law, pursuant to Section 21(b) of the Act (*R. 2*).

On December 27th, 1941, the District Court entered judgment setting aside the Deputy Commissioner's Order, Award of Compensation and enjoining the enforcement thereof (*R. 73-75*). Thereafter, the Civil District Court for the Parish of Orleans, State of Louisiana, in the exercise of its jurisdiction over the minor claimant and her tutrix, ordered the tutrix to abandon the minor's claim and right to appeal, and authorized her to compromise and settle the claim of the minor (*R. 78 m*). On February 10th, 1942, the tutrix through her attorney, served notice on the Deputy Commissioner of the abandonment

and withdrawal of the claim (R. 78 q). Subsequently thereto, on March 17th, 1942, the Deputy Commissioner alone, appealed from the final judgment dismissing the Order, Award of Compensation (R. 75), and in due course appellees, petitioners herein, moved to dismiss the appeal (R. 78 a).

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### STATUTES INVOLVED.

The statute involved is the Longshoremen's and Harbor Workers' Compensation Act (Mar. 4, 1927, c. 509 Sec. 1, et seq. 44 Stat. 1494 et seq., [33 USCA Secs. 901 et seq.]) the pertinent parts of which are more particularly set out in the appendix hereto.

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### QUESTIONS PRESENTED.

#### 1.

Whether the United States Employees Compensation Commissioner may alone, in his *quasi-judicial* capacity, appeal from a final judgment of a United States District Court reversing, and enjoining the enforcement of his Order, Award of Compensation, especially in view of the fact that the claimant has not appealed therefrom, but has acquiesced in said judgment.

#### 2.

Whether the voluntary abandonment and withdrawal by the claimant of the claim for compensation, after the Dis-



strict Court had rendered a judgment adversely to the claimant reversing the award of the Commissioner and after claimant had acquiesced therein, renders the matter so far a moot question, that the appeal taken by the Commissioner must be dismissed.

## 3.

Whether an Order, Award of Compensation under the Longshoremen's and Harbor Workers' Compensation Act, which has been rendered contradictorily with an unrepresented minor claimant is "in accordance with law" within the meaning of Section 21(b) of the Act or whether the presence of a properly qualified representative is required for the validity of proceedings had before the Deputy Commissioner.

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**RULINGS OF THE COURT BELOW.**

The Circuit Court of Appeals for the Fifth Circuit held:

(1) That the Commissioner was a proper party appellant, since under the statute, he is the sole party defendant in a proceeding to review his Order, Award of Compensation (*R. 81, line 30*).

(2) That the appeal was not rendered moot by reason of the abandonment, withdrawal and settlement of the claim by claimant because, under sections 15(b) and 16 of the Act which purport to prohibit settlements, the compromise agreement was ineffective (*R. 81, line 17*).

(3) Both the District Court and the Circuit Court of Appeals failed to recognize, consider and properly adjudicate upon the question as to whether the proceedings had before the Commissioner contradictorily with an unrepresented minor, was in accordance with law.

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### REASONS FOR GRANTING.

(1) The Circuit Court of Appeals held that the Commissioner, as the only necessary party defendant in the injunction suit was entitled to appeal from the decision of the District Court reversing his own decisions.

So holding, the Circuit Court of Appeals has decided an important question of law which has not been, but should be settled by this Court. The decisions of the highest courts of the States of New York, Maryland, Minnesota, Pennsylvania, Wisconsin, Louisiana and other representative decisions which represent the great weight of authority hold, that *quasi-judicial* tribunals as such, are prohibited from engaging in litigation concerning the validity of their own decisions. We read the ruling of the Circuit Court of Appeals, as being in conflict with the great weight of authority on this important question of law.

(2) In holding that the question presented by the appeal had not become moot because the settlement was prohibited by the Act, the Circuit Court of Appeals has failed to consider the real question presented, namely the right of a claimant to withdraw from and abandon litigation after an adverse decision, and in so holding the Cir-

cuit Court of Appeals has decided in conflict with the doctrine announced in *Addington v. Burke*, 123 U. S. 693, 8 S. Ct. 1391, 31 L. Ed. 853 (1887); *Elwell v. Fosdic*, 134 U. S. 500, 10 S. Ct. 598, 33 L. Ed. 998 (1890); *County of Dakota v. Glidden*, 113 U. S. 222, 5 S. Ct. 428, 28 L. Ed. 981 (1885); *U. S. Consol. Seeded Raisin Co. v. Chaddock & Co.*, 173 F. 577, 97 C. C. A. 527, 19 Ann. Cas. 1054 (1909); *Mills v. Green*, 159 U. S. 651, 16 S. Ct. 132, 40 L. Ed. 293 (1895); *United States v. Hamburg-American Steamship Co.*, 239 U. S. 466, 36 S. Ct. 212, 60 L. Ed. 387 (1916) and other decisions cited in the argument, to the effect that a Court is not empowered to decide moot questions or abstract propositions, or to announce rules of law which cannot affect the result as to the thing in issue in the case before it.

(3) In failing to consider and properly adjudicate upon the validity of the proceedings had before the Commissioner contradictorily with a person not *sui juris*, the Fifth Circuit Court of Appeals has overlooked the applicable provisions of the Act as well as its own decision in *Maryland Casualty Co. v. Lawson*, 110 F. (2d) 269 (C. C. A. 5th, 1940) and the ruling announced by the Court of Appeals for the District of Columbia in *Hoage v. Terminal Refrigerating and Warehousing Co.*, 78 F. (2d) 1009 (1935) and other representative decisions cited in the argument, all to the effect that a minor or other incompetent, is not a party to proceedings had before a deputy commissioner unless properly represented therein. This court has not as yet decided this important question.

For the foregoing reasons, and because of the importance of the questions presented, Glens Falls Indemnity Company and Jahncke Service Inc., petitioners herein pray that a Writ of Certiorari issue to review the decree entered herein on February 10th, 1943, by the Circuit Court of Appeals for the Fifth Circuit in the above entitled cause.

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